

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BRIAN D'AMATO and PAUL D'AMATO,  
as partners of SISBRO I, SISBRO  
II, and SISBRO III,

Plaintiffs,

v.

REGINA LILLIE and GERALD LILLIE,  
as partners of SISBRO I, SISBRO  
II, and SISBRO III,

Defendants.

NO. CV-06-0314-EFS

**ORDER RULING ON POST-TRIAL  
MOTIONS**

Post-trial hearings occurred in the above-captioned matter on August 20 and October 23, 2008. Robert Dunn and Michael Tucker appeared on behalf of Plaintiffs Brian and Paul D'Amato. Defendants Regina and Gerald Lillie were represented by Ian Ledlin and Stephen Phillabaum at the August hearing and by Ian Ledlin at the October hearing. Before the Court were (1) Plaintiffs' Supplemental Request for Declaratory Relief (Ct. Rec. 407), (2) Plaintiffs' Motion to Amend Judgment Re: Damages (Ct. Rec. 418), (3) Plaintiffs' Motion to Amend Judgment or Alternative Motion for Trial Re: Statute of Limitations (Ct. Rec. 421), (4) Plaintiffs' Alternative Motion for New Trial Re: Damages (Ct. Rec. 424), (5) Plaintiffs' Alternative Motion for New Trial Re: Jury Instructions

(Ct. Rec. 427), (6) Defendants' Motion to Alter or Amend Judgment (Ct. Rec. 433), and (7) Defendants' Cross-Motion for Declaratory Relief (Ct. Rec. 459). After reviewing the submitted material and applicable authority in light of the trial evidence, jury instructions, and jury verdict, the Court is fully informed. This Order memorializes and supplements the Court's oral rulings. The Court denies the motions for new trial and to amend the judgment, absent granting Defendants' motion to amend the language of the Judgment.

**A. Plaintiff's Motions: Re Damages**

Plaintiffs filed a Motion to Amend Judgment Re: Damages (Ct. Rec. 418) and an Alternative Motion for New Trial Re: Damages (Ct. Rec. 424). Plaintiffs ask the Court to modify the verdict because a zero damages finding for SISBRO I and II and an offset of the SISBRO III \$32,747.76 damages award is arbitrary and resulted from the inappropriate use of an affirmative defense in this contract action. In the alternative, Plaintiffs ask the Court for a new trial on damages.

1. Standard

"A jury's verdict must be upheld if it is supported by substantial evidence, which is evidence adequate to support the jury's conclusion, even if it is also possible to draw a contrary conclusion." *Pavao v. Pagay*, 307 F.3d 915, 918 (9th Cir. 2002). Accordingly, a new trial may be granted pursuant to Federal Rule of Civil Procedure 59(a) if a verdict is inconsistent, the result of passion or prejudice, based on false or prejudicial testimony, or contrary to the clear weight of the evidence, or to prevent a miscarriage of justice. *Passantino v. Johnson & Johnson Consumer Prods., Inc.*, 212 F.3d 493, 510 n.15 (9th Cir. 2000); *Pershing Park Villas Homeowners Ass'n v. United Pac. Ins. Co.*, 219 F.3d

895, 905 (9th Cir. 2000); *Will v. Comprehensive Accounting Corp.*, 776 F.2d 665, 677 (7th Cir. 1985). "When faced with a claim that verdicts are inconsistent, the court must search for a reasonable way to read the verdicts as expressing a coherent view of the case, and must exhaust this effort before it is free to disregard the jury's verdict and remand the case for a new trial." *Toner v. Lederle Labs, a Div. of Am. Cyanamid Co.*, 828 F.2d 510, 512 (9th Cir. 1987); *Duk v. MGM Grand Hotel, Inc.*, 320 F.3d 1052, 1058 (9th Cir. 2003); *Tanno v. S.S. President Madison Ves.*, 830 F.2d 991, 992 (9th Cir. 1987); *Gallick v. Baltimore & Ohio R.R. Co.*, 372 U.S. 108, 199 (1963); *Stephenson v. Doe*, 332 F.3d 68, 79 (2d Cir. 2003). "The consistency of the jury verdicts must be considered in light of the judge's instructions to the jury." *Toner*, 828 F.2d at 512.

A plaintiff's path towards a new trial based on inadequate damages is feasible, but formidable. *Mekdeci v. Merrell Nat'l Labs.*, 711 F.2d 1510, 1513 (11th Cir. 1983); *Wagenmann v. Adams*, 829 F.2d 196, 215 (1st Cir. 1987). This is because "[t]ranslating legal damage into money damages is a matter peculiarly within a jury's ken, especially in cases involving intangible, non-economic losses." *Smith v. Kmart Corp.*, 177 F.3d 19, 30 (1st Cir. 1999) (internal citations omitted). The Ninth Circuit has routinely held that, if a court finds a jury's damages amount is based on passion and prejudice, a new trial on liability is not appropriate unless that finding was also based on passion and prejudice. *Pershing Park*, 219 F.3d at 905.

## 2. Damages Award

Both parties agree that Instruction No. 17 appropriately required the jury to determine whether "Plaintiffs were damaged as a result of

1 Defendant(s)' breach." Consistent with Instruction No. 17, the verdict  
2 asked the jury to determine "the amount, if any, of Plaintiffs' damages  
3 proximately caused by Defendants' breach . . . ." (Ct. Rec. 400 p. 2.)  
4 Plaintiffs contend that the jury ignored this fourth damages element  
5 and, as a result, the jury verdict is inconsistent and contradictory.<sup>1</sup>

6 Admittedly, at first glance, in light of the SISBRO I and II breach  
7 finding, the jury's zero damages award for SISBRO I and II is puzzling.  
8 However, upon further reflection and in light of the verdict's  
9 advisement that the jury need not award damages in the event of a  
10 breach, the evidence supports the zero damages finding for SISBRO I and  
11 II, and the "offset" damages award for SISBRO III.

12 a. *SISBRO I and II*

13 The jury's breach and damages findings can be reconciled a number  
14 of ways. First, the jury could have determined that the amount of wages  
15 taken by the Lillies was appropriate, *i.e.*, that the Lillies were  
16 entitled to a salary per salon, but that the Lillies breached Paragraphs  
17 10 by not documenting their actual work. The jury could then have  
18 determined that the Lillies did engage in the actual work claimed and,  
19 therefore, Defendants' failure to document time worked did not  
20 proximately cause Plaintiffs any damages.

21 Second, the jury could have determined that regardless of whether  
22 Paragraphs 10 required time records, Paragraphs 10 only allowed  
23 Defendants to take a salary for each partnership entity - not per salon.  
24 If this was the jury's finding, the zero damages finding for SISBRO I

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25 <sup>1</sup> Plaintiffs relied upon *Lloyd's of London v. Warren*, 66 Ark. App.  
26 370 (1999). Because *Lloyd's of London* is factually distinguishable, the  
27 Arkansas Court of Appeals' decision is not persuasive here.

1 and II is also supported by the evidence. Defendants presented evidence  
2 that the partnerships would have incurred the same or greater expenses  
3 if Paragraphs 10 did not allow the taking of salaries as believed by  
4 Defendants. Both Regina and Gerald Lillie testified that they would not  
5 have quit their full-time employment with United Air Lines or continued  
6 to expand the salon enterprise if they were limited to taking only a  
7 single monthly salary for each partnership entity. Based on the  
8 Lillies' testimony, the jury could have determined: (1) the partnerships  
9 would have had to incur "outside" management expense - an expense equal  
10 to or more than that "charged" by Defendants in order to expand and,  
11 therefore, Defendants' breach of Paragraphs 10 did not proximately cause  
12 Plaintiffs damages and/or (2) the partnerships would not have been as  
13 financially profitable because additional salons would not have been  
14 started under SISBRO I and II, and SISBRO III would not have been  
15 developed and, therefore, Defendants' breach of Paragraphs 10 did not  
16 proximately cause any damages to Plaintiffs.

17 For any of these reasons, the jury could have determined that  
18 Defendants' SISBRO I and II breach did not proximately cause Plaintiffs  
19 damage. Accordingly, the jury's zero damages award for SISBRO I and II  
20 is supported by the evidence.

21 b. *SISBRO III*

22 In relation to SISBRO III, the Court is admittedly uncertain how  
23 the jury determined that Plaintiffs' damages proximately caused by  
24 Gerald Lillies' breach of Paragraph 10 was \$32,747.76. However, it is  
25 reasonable that the jury's SISBRO III damages award was based in part  
26 upon Instruction No. 23:

27 In determining whether Gerald Lillie breached the SISBRO  
28 III partnership agreement, you are instructed that it is not  
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1 a breach for Mr. Lillie to hire his wife because he had  
2 authority as general managing partner to hire whomever he  
wished.

3 Further, you are instructed that it was not a breach of  
4 the SISBRO III partnership agreement for Mr. Lillie to make  
annual distributions to himself and his wife, Regina Lillie,  
5 so long as those distributions did not exceed 72% of that  
year's annual distributions.

6 (Ct. Rec. 382 Instr. No. 23.) The jury likely determined that Gerald  
7 Lillie's distributions exceeded 72% for a particular year. Or, the jury  
8 could have looked at the e-mails and other documents to determine that  
9 Gerald Lillie did not work the full claimed hours and, therefore, the  
10 jury reduced his salary by the unworked hours.

11 c. *Damages Award Conclusion*

12 Because the jury's damage awards were not arbitrary or  
13 inconsistent, Plaintiff's motion for amended judgment or new trial in  
14 relation to damages is denied.

15 2. Unjust Enrichment - Quantum Meruit

16 Plaintiffs also argue that instructing on unjust enrichment was  
17 inappropriate and necessitates amending the verdict or holding a new  
18 trial. Plaintiffs rely upon *RWR Management, Inc. v. Citizens Realty*  
19 *Co.*, 133 Wn. App. 265 (2006), and the recent Washington Supreme Court  
20 decision, *Young v. Young*, 191 P.3d 1258 (Wash. 2008).

21 The Court relied in large part upon *RWR Management* when it  
22 instructed the jury on Defendants' requested "affirmative defense." In  
23 *Young*, a 5-4 decision, the Washington Supreme Court identified the  
24 measure of damages in a land improvement unjust enrichment claim. In  
25 resolving this issue, the Washington Supreme Court "took this  
26 opportunity to conceptually clarify the distinction between 'unjust  
27 enrichment' and 'quantum meruit.' [Recognizing that] Washington courts  
28 have historically used these terms synonymously, but the distinction  
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1 between them is legally significant." *Id.* at 1261. The court discussed  
2 that unjust enrichment is the method of recovery for a contract implied  
3 in law - where a benefit was conferred and retained absent a contractual  
4 relationship. *Id.* at 1261-62. Whereas, quantum meruit "is the method  
5 of recovering the reasonable value of services provided under a contract  
6 implied in fact." *Id.* at 1262. The court noted that "'quantum meruit'  
7 has . . . been used to recover value of services provided when a change  
8 occurs that was not within the contemplation of the parties and the  
9 change requires extra work and materials or causes a substantial loss to  
10 the claimaint." *Id.* at 1262 n.4. See also *RWR Mgmt., Inc.*, 133 Wn.  
11 App. at 275-76.

12 This was the situation here. Defendants asked for an instruction  
13 allowing them to pursue a theory seeking recovery for the value of their  
14 "extra" services in the event the jury accepted Plaintiffs'  
15 interpretation of the partnership contracts, *i.e.*, that the partnership  
16 contracts did not allow Defendants to take a salary per salon. Given  
17 the evidence and arguments presented to the jury, the Court deemed it  
18 necessary to allow Defendants to pursue this theory. Instruction Nos.  
19 17, 20, and 21, as well as the verdict, were the Court's attempt to so  
20 instruct the jury. The instructions and verdict referred to this theory  
21 as "unjust enrichment." *Young* makes clear that the theory Defendants  
22 were pursuing was a quantum meruit recovery for a contract implied in  
23 fact. As explained below, *Young* does not require either a new trial or  
24 amendment to the damages award.

25 To establish a contract implied in fact, Defendants had to prove:  
26 an agreement depending for its existence on some act or  
27 conduct of the party sought to be charged and arising by  
28 implication from circumstances, which according to common  
understanding, show a mutual intention on the part of the

1 parties to contract with each other. The services must be  
2 rendered under such circumstances as to indicate that the  
3 person rendering them expected to be paid therefor, and that  
the recipient expected, or should have expected, to pay for  
them.

4 *Young*, 191 P.3d at 1262-63. Plaintiffs correctly highlight that Jury  
5 Instruction No. 20 did not specifically ask the jury to find that (1)  
6 Plaintiffs requested this "extra" work, (2) that Defendants expected to  
7 pay for the work, and (3) Plaintiffs knew or should have known  
8 Plaintiffs expected payment for the work. Rather, Instruction No. 20's  
9 elements resembled the elements for contract implied in law. See *id.* at  
10 1262 (quoting *Bailie Commc'ns v. Trend Bus. Sys.*, 61 Wn. App. 151, 159-  
11 60 (1991)). Notwithstanding Instruction No. 20's use of unjust  
12 enrichment elements, the Court finds the undisputed evidence, jury  
13 instructions, and findings thereon, support a contract implied in fact  
14 quantum meruit recovery.

15 It was undisputed that the Lillies took payments per salon (Ct.  
16 Rec. 353 Undisputed Fact No. 60); the dispute was whether this was  
17 appropriate under the partnership contracts. Accordingly, in the event  
18 the jury determined that the partnership contracts did not permit  
19 Defendants to take a salary per salon, it was clear that Plaintiffs  
20 expected payment for their "extra" work since they undisputedly took a  
21 per-salon salary payment. This undisputed per-salon salary payment, in  
22 conjunction with Instruction No. 20's second prong - "under the  
23 circumstances Plaintiffs either knew or reasonably should have known of  
24 the services performed and the benefit conferred" -, is equal to a  
25 finding that Plaintiffs knew or should have known that Defendant  
26 expected payment for their "extra" work. The second and third contract  
27 implied in fact elements are, therefore, supported by the undisputed

1 evidence, jury instructions, and jury findings thereon.

2       The first element - whether Plaintiffs requested the work - is met  
3 with Instruction No. 20's requirement that the jury must find "that  
4 substantial changes occurred *requiring* Defendants to perform work  
5 outside the scope of the contract(s)." (Emphasis added.) The  
6 substantial changes would not be *required* if the jury had not found that  
7 Plaintiffs, either explicitly or implicitly, agreed that Defendants  
8 perform work outside the scope of the contracts. *See Young*, 191 P.3d at  
9 1263 ("[S]ervices [were] rendered under such circumstances as to  
10 indicate that the person rendering them expected to be paid therefor,  
11 and that the recipient expected, or should have expected, to pay for  
12 them." Such a finding is supported by the trial evidence. The Lillies  
13 testified that they only envisioned one salon when the SISBRO I  
14 partnership documents were signed. Then, when the second salon began,  
15 a separate partnership entity - SISBRO II - was formed. Therefore, the  
16 jury could reasonably conclude that the parties intended for Paragraphs  
17 10 to allow a salary to be taken per partnership entity. The jury could  
18 have determined that Dennis Lillie's death and the addition of more  
19 salons being operated under the SISBRO I and II partnership entities  
20 were substantial changes. There was sufficient evidence for the jury to  
21 conclude that Defendants "performed services for [Plaintiffs'] benefit  
22 in addition to those required by the written partnership agreements"  
23 when they opened and operated new salons with Plaintiffs' consent under  
24 existing partnership agreements. *RWR Mgmt.*, 133 Wn. App. at 277  
25 (quoting special verdict form). In sum, Instruction No. 20 implicitly  
26 required the jury to find the first element and there was evidence to  
27 support this element.

1 Accordingly, given the undisputed evidence, the instructions, and  
2 jury findings, the Court finds the jury findings support a contract  
3 implied in fact quantum meruit recovery - speculation is not required.

4 3. Conclusion

5 For the above reasons, the Court denies Plaintiffs' Motion to Amend  
6 Judgment Re: Damages (Ct. Rec. 418) and Plaintiffs' Alternative Motion  
7 for New Trial Re: Damages (Ct. Rec. 424).

8 **B. Plaintiffs' Motion to Amend Judgment or Alternative Motion for**  
9 **Trial Re: Statute of Limitations (Ct. Rec. 421)**

10 Plaintiffs contend the Court's statute of limitations ruling  
11 constitutes reversible error because the Court (1) ignored its earlier  
12 May 2008 ruling, (2) misapplied the discovery rule, and (3) omitted any  
13 consideration of the accounting duties general partners owe to limited  
14 partners.

15 In May 2008, the Court determined laches did not apply as a matter  
16 of law because material factual disputes existed as to whether  
17 Plaintiffs unreasonably delayed in bringing the lawsuit after learning,  
18 or reasonably should have learned about, the facts constituting their  
19 breach of contract claims. (Ct. Rec. 272 p. 11.) The Court did not  
20 specifically address the contractual statute of limitations or the  
21 effect of the laches doctrine's equitable nature.

22 At trial, Defendants orally moved to dismiss Plaintiffs' breach of  
23 contract claims because they were barred by laches and/or limited by the  
24 applicable statute of limitations. The Court ruled that laches, an  
25 equitable doctrine, was not applicable to the legal breach of contract  
26 claim seeking damages. Yet, the Court granted in part Defendants' oral  
27 motion to dismiss Plaintiffs' breach of contract claims due to the

1 applicable contractual statute of limitations: Washington's six-year  
2 statute of limitations and Idaho's five-year statute of limitations. The  
3 Court memorialized its ruling in an Order entered on July 7, 2008. (Ct.  
4 Rec. 414.)

5 Plaintiffs contend this ruling was erroneous because Defendants  
6 failed to meet the high standard of evidence needed to satisfy the  
7 mailbox rule, relying on *Olson v. The Bon, Inc.*, 144 Wn. App. 627  
8 (2008). In *Olson*, the Washington Court of Appeals stated:

9 The presumption of receipt permitted under the common law  
10 mailbox rule is not invoked lightly. It requires proof of  
11 mailing, such as an independent proof of a postmark, a dated  
12 receipt, or evidence of mailing apart from a party's own self-  
13 serving testimony. The independent proof may also be in the  
14 form of business records establishing the mailing, evidence of  
15 a course of business regarding mailing, or third party  
16 testimony witnesses the mailing.

17 *Id.* at 634 (internal citations omitted). Here, Defendants' proof of  
18 mailing was Gerald Lillie's self-serving statement that he mailed  
19 financial documents to the partners, supported by Norma Kraus'  
20 deposition testimony that she received financial documents from Gerald  
21 Lillie in the past, along with the bookkeeper's statement that she  
22 prepared the financial documents for Gerald Lillie to mail out to the  
23 partners. Although this evidence did not include written proof or eye-  
24 witnessed mailing, the Court finds this evidence taken, in its entirety,  
25 satisfies the mailbox rule's high standard. The Court therefore abides  
26 by its finding - receipt is presumed.

27 Plaintiffs also argue that the Court's failure to apply the  
28 discovery rule exception to the statute of limitations was erroneous  
because Defendants failed in their duty as general partners to clearly

1 identify the claimed salary.<sup>2</sup> The Court finds its trial determination  
2 that Plaintiffs reasonably should have known of the claimed breach at  
3 the time of the disclosure of the "guaranteed payment" is supported by  
4 the evidence. The Court abides by its conclusion that the discovery  
5 exception to the statute of limitations does not apply. Plaintiffs'  
6 SISBRO I and II breach of contract damages were properly limited to  
7 post-2000, and SISBRO III breach of contract damages properly limited to  
8 post-2001.

9 For the above reasons, the Court finds it did not ignore its  
10 earlier May 2008 ruling, appropriately applied the discovery rule, and  
11 appropriately omitted consideration of partnership accounting duties in  
12 reaching its statute of limitations ruling. Plaintiffs' Motion to Amend  
13 Judgment or Alternative Motion for New Trial Re: Statute of Limitations  
14 is denied.

15 **C. Plaintiffs' Alternative Motion for New Trial Re: Jury Instructions**  
16 **(Ct. Rec. 427)**

17 Plaintiffs maintain that the Court's instructions created  
18 reversible error, specifically referring to Instruction No. 20 (unjust  
19 enrichment), (2) Instruction Nos. 19 and 22 (extrinsic evidence), and  
20 Instruction Nos. 21 and 23 (improper comments on the evidence).  
21 Defendants submit that the jury instructions were legally correct and  
22 supported factually.

23 "It is the duty of the trial court to instruct the jury on issues

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24 <sup>2</sup> Plaintiffs did not bring a derivative action and did not pursue  
25 the Amended Complaint's accounting remedy in the Pretrial Order.  
26 Therefore, the derivative partnership accounting cases cited by  
27 Plaintiffs are inapplicable.  
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1 raised by the pleadings and supported by the evidence and nothing more."  
2 *Radio Corp. of Am. v. Radio Station KYFM*, 424 F.2d 14, 19 (10th Cir.  
3 1970). A prejudicial erroneous jury instruction is a basis for a new  
4 trial. *Murphy v. City of Long Beach*, 914 F.2d 183, 187 (9th Cir. 1990);  
5 *Coursen v. A.H. Robins Co.*, 764 F.2d 1329, 1337 (9th Cir. 1985).

6 1. Instruction No. 20

7 Instruction No. 20 was discussed above in connection with  
8 Plaintiffs' motions regarding damages. The Court acknowledges it  
9 labeled the theory advanced by Defendants: contract implied in fact  
10 quantum meruit recovery. Nevertheless, the instructions appropriately  
11 placed the burden on Defendants to prove entitlement to this recovery.  
12 And notwithstanding *Young*, the instructions and verdict, when viewed in  
13 their entirety and in connection with the undisputed evidence, required  
14 the jury to make the necessary findings for a contract implied in fact  
15 quantum meruit recovery. Plaintiffs were not prejudiced by the unjust  
16 enrichment instruction.

17 2. Extrinsic Evidence of Intent

18 Plaintiffs continue to maintain it was erroneous for extrinsic  
19 evidence regarding the intent of the three partnership agreements to be  
20 admitted and, therefore, argue that Instructions No. 19 and 22 were  
21 erroneously provided. As the Court stated in its summary judgment  
22 rulings and at the pretrial conference, Washington and Idaho allow the  
23 jury to consider extrinsic evidence to determine the parties' intent  
24 when the partnership agreements were entered. *Spectrum Glass Co. v.*  
25 *Publ. Util Dist. No. 1 of Snohomish County*, 129 Wn. App. 303, 311-12  
26 (2005). Rather than utilize WPI 301.05's exact language, the Court  
27 based Instruction No. 19's language on WPI 301.05, *Spectrum Glass*, and

1 *Berg v. Hudesman*, 115 Wn.2d 657, 669 (1990). The Court finds  
2 Instruction No. 19 appropriately instructed the jury as to what they  
3 could, and could not, consider.

4 Instruction No. 22 simply set forth the law in Washington as  
5 recognized by *Lemen v. Pring Corp.*, 4 Wn. App. 462, 466 (1971), - that  
6 two or more documents must be construed together when determining the  
7 parties' intent with respect to the agreement if the documents are part  
8 of the same transaction. It was not error to provide this instruction.

9 3. Comments on the Evidence

10 Plaintiffs maintain that Jury Instruction Nos. 21 and 23 were  
11 erroneously given.

12 Instruction No. 21 was the statute of limitations instruction. For  
13 the reasons given above, the Court's mailbox presumption finding and  
14 statute of limitations application were proper.

15 Instruction No. 23 told the jury that it was not a breach for Mr.  
16 Lillie to hire his wife and to make annual distributions to himself and  
17 his wife so long as those distributions did not exceed 72% of that  
18 year's annual distributions. Plaintiffs maintain that providing this  
19 instruction without providing an instruction regarding the duty of good  
20 faith and fair dealing inherent in every contract and/or the fiduciary  
21 duties owed by general partners to limited partners allowed the jury to  
22 impermissibly conclude that general partners have the authority to do  
23 whatever they want in the partnership.

24 When viewed in their entirety, the instructions did not allow the  
25 jury to conclude that Defendants had the authority to do whatever they  
26 wanted without risking a breach of the partnership contracts.  
27 Furthermore, Plaintiffs did not plead a violation of the good faith and

1 fair dealing cause of action. Plaintiffs did pursue a breach of  
2 fiduciary duty cause of action. The Court correctly determined the  
3 breach of fiduciary duty cause of action was barred by the economic loss  
4 rule because (1) the duties owed to Plaintiffs are created by the  
5 partnership agreement and (2) Plaintiffs claimed economic damages. See  
6 *Alejandro v. Bull*, 159 Wn.2d 674 (2007); *Sorensen v. St. Alphonsus Reg.*  
7 *Med. Ctr.*, 141 Idaho 754 (2005). Accordingly, the Court appropriately  
8 did not instruct the jury on either a breach of the implied covenant of  
9 good faith and fair dealing cause of action or a fiduciary duty cause of  
10 action.

11 Instruction No. 23 was appropriately included to ensure the jury  
12 did not confuse the impact when Gerald Lillie made SISBRO III annual  
13 distributions.

14 4. Conclusion

15 The Court finds the instructions were not prejudicially erroneous  
16 and, therefore, denies Plaintiffs' motion.

17 **D. Motions for Declaratory Relief**

18 Both parties filed motions for declaratory relief: Plaintiffs'  
19 Supplemental Request for Declaratory Relief (Ct. Rec. 407) and  
20 Defendants' Cross-Motion for Declaratory Relief (Ct. Rec. 459).

21 1. Plaintiffs' motion

22 Plaintiffs ask the Court to order the general partners of SISBRO I,  
23 II, and III to document and account for hours actually worked in SISBRO  
24 I, II, and III henceforth so that the appropriate compensation can be  
25 determined under Paragraphs 10. The Court declines to do so. The  
26 verdict is not sufficiently certain to allow for entry of the requested  
27 declaratory judgment to be drafted with precision. See Restatement

(Second) of Contracts § 362 (1982).

2. Defendants' motion

Defendants ask the Court to enter a declaratory judgment finding that Defendants are entitled to \$273,600.00 per year for services they provide to the partnerships and salons. The Court denies this motion. Although the jury determined Defendants were entitled to their past compensation, the jury's findings do not support the issuance of a declaratory judgment allowing Defendants to take *prospective* \$273,600.00 annual salary payments.

**E. Defendants' Motion to Alter or Amend Judgment (Ct. Rec. 433)**

Defendants ask the Court to amend the Judgment to reflect that Plaintiffs have no judgment against Defendants and that Defendants have no judgment against Plaintiffs.

The Judgment currently states:

IT IS ORDERED AND ADJUDGED that Defendants Gerald and Regina Lillie breached partnership contracts and Plaintiffs are awarded judgment against Defendant Gerald Lillie in the amount of \$32,747.76 for his breach of the SISBRO III partnership contract after November 9, 2001; and Defendant Gerald Lillie is awarded judgment against Plaintiffs in the amount of \$32,747.76 on his unjust enrichment affirmative defense claim related to SISBRO III.

(Ct. Rec. 404). As set forth above, the jury's zero damages award in connection with Defendants' breach of SISBRO I and II and the jury's SISBRO III and quantum meruit "offset" are supported by the evidence and are consistent with each other. Because the Judgment incorrectly labels Defendant Gerald Lillie's SISBRO III recovery as "unjust enrichment" and Plaintiffs failed to prove the necessary damages element in connection with SISBRO I and II breach of contract claims, the Court orders an amended Judgment to be entered as follows:

1 IT IS ORDERED AND ADJUDGED that (1) Plaintiffs suffered no  
2 damages as a result of Defendants Gerald and Regina Lillies'  
3 breach of SISBRO I and II partnership agreements; and (2)  
4 although Plaintiffs suffered damages in the amount of  
5 \$32,747.46 as a result of Gerald Lillies' breach of the SISBRO  
6 III partnership agreement, Gerald Lillie is entitled to a  
7 quantum meruit recovery in this same amount. No money  
8 judgment is to be entered against either party.

9 **F. Conclusion**

10 For the above given reasons, **IT IS HEREBY ORDERED:**

11 1. Plaintiffs' Motion to Amend Judgment Re: Damages (**Ct. Rec.**  
12 **418**) is **DENIED**.

13 2. Plaintiffs' Alternative Motion for New Trial Re: Damages (**Ct.**  
14 **Rec. 424**) is **DENIED**.

15 3. Plaintiffs' Motion to Amend Judgment or Alternative Motion for  
16 Trial Re: Statute of Limitations (**Ct. Rec. 421**) is **DENIED**.

17 4. Plaintiffs' Alternative Motion for New Trial Re: Jury  
18 Instructions (**Ct. Rec. 427**) is **DENIED**.

19 5. Plaintiffs' Supplemental Request for Declaratory Relief (**Ct.**  
20 **Rec. 407**) is **DENIED**.

21 6. Defendants' Cross-Motion for Declaratory Relief (**Ct. Rec. 459**)  
22 is **DENIED**.

23 7. Defendants' Motion to Alter or Amend Judgment (**Ct. Rec. 433**)  
24 is **GRANTED**. The Clerk's Office is to enter an Amended Judgment:

25 IT IS ORDERED AND ADJUDGED that (1) Plaintiffs suffered no  
26 damages as a result of Defendants Gerald and Regina Lillies'  
27 breach of SISBRO I and II partnership agreements; and (2)  
28 although Plaintiffs suffered damages in the amount of  
\$32,747.46 as a result of Gerald Lillies' breach of the SISBRO  
III partnership agreement, Gerald Lillie is entitled to a  
quantum meruit recovery in this same amount. No money  
judgment is to be entered against either party.

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1       **IT IS SO ORDERED.** The District Court Executive shall enter this  
2 Order and forward copies to counsel.

3       DATED this 23rd day of October, 2008.

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6                               s/Edward F. Shea  
7                               EDWARD F. SHEA  
8                               UNITED STATES DISTRICT JUDGE

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